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10/699,780	11/04/2003	Sue Feng	5725.0895-02	5902

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
901 NEW YORK AVENUE, NW  
WASHINGTON, DC 20001-4413

EXAMINER
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VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1619

MAIL DATE	DELIVERY MODE
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08/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,780	<b>Applicant(s)</b> FENG ET AL.	
	<b>Examiner</b> JYOTHSNA A. VENKAT	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 96,142,167,170,175,203 and 206 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 96,142,167,170,175,203 and 206 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/11/08 and 6/10/08</u> .                                     | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Receipt is acknowledged of amendment, remarks and IDS filed on 2/11/08 response with regard to "request for information under 37 C.F.R. § 1.105" filed on 5/22/08. Receipt is also acknowledged of IDS filed on 6/10 /08 and disclaimer filed on 5/20/09.

### Status of claims

Claims **1-95, 97-141, 143-166, 168-169, 171-174, 176-202 and 204-205 have been cancelled.** Claims 96, 142, 167, 170, 175, 203 and 206 are currently examined in the application.

### *Claim Rejections - 35 USC § 112*

Claims 96, 142, 167, 170, 175, 203 and 206 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **This is new matter rejection.**

There is no support in the specification for species belonging to structuring polymer, which is “**ethylenediamine/stearyl dimer tallate copolymer**”.

Specification at [0064] teaches:

*“Non-limiting examples of an at least one polyamide polymer that may be used in the composition according to the present invention include the commercial products sold by Arizona Chemical under the names Uniclear 80 and Uniclear 100. These are sold, respectively, in the form of an 80% (in terms of active material) gel in a mineral oil and a 100% (in terms of active material) gel. These polymers have a softening point ranging*

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*from 88°C to 94 °C, and may be mixtures of copolymers derived from monomers of (i) C36 diacids and (ii) ethylenediamine, and have a weight-average molecular mass of about 6000. Terminal ester groups result from esterification of the remaining acid end groups with at least one alcohol chosen from cetyl alcohol and stearyl alcohol. A mixture of cetyl and stearyl alcohols is sometimes called cetylstearyl alcohol”.*

Initially it would appear that Uniclear® 80 and Uniclear® 100 refer to two products containing the same polymer base. The specification describes sources of diacids as resulting from the reaction of any of oleic acid, linoleic acid and linolenic acid with another compound containing 14 to 26 carbon atoms. Diacids are known in the art to result from the polymerization of unsaturated fatty acids (see US 5,783,657 at column 5).

The specification teaches the species, which can be formed from (i) C36 diacids and ethylenediamine and the terminal ester groups result from esterification of the remaining acid end groups can be with cetyl alcohol or the species can be formed from (ii) C36 diacids and ethylenediamine and the terminal ester groups result from esterification of the remaining acid end groups can be with stearyl alcohol or the species can be formed from (ii) C36 diacids and ethylenediamine and the terminal ester groups result from esterification of the remaining acid end groups can be with a mixture of cetyl and stearyl alcohols also known as cetylstearyl alcohol.

In response to "request for information under 37 C.F.R. § 1.105 Rule”, applicants’ submit Exhibit 1, drawn to International Cosmetic Ingredient Dictionary (CTFA, page 606, 2002).

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Page 606 of CTFA states that ethylenediamine/stearyl dimer dilinoleate copolymer is a copolymer of ethylenediamine and stearyl dimer dilinoleate monomers and further reciting that a trade name for ethylenediamine/stearyl dimer dilinoleate copolymer is Uniclear®. The same page also recites that ethylenediamine/stearyl dimer tallate copolymer is a copolymer of ethylenediamine and tall oil dimer acid monomers, end blocked with stearyl alcohol and further recites that a trade name for ethylenediamine/stearyl dimer tallate copolymer is Uniclear®.

Thus CTFA only identifies Uniclear® and does not distinguish between Uniclear® 80, Uniclear® 100, Uniclear® 100V or Uniclear® 100VG.

Applicants' are notified that International Cosmetic Ingredient Dictionary is not a competent document since the effective filing date of instant application is 10/5/01 and the publication date of the dictionary is 2002.

Applicants' also submit as Exhibit 2, a redacted version of confidential proprietary documents from the Assignee Company. See below

Réf. Commerciale	Fabricant / Distributeur
UNICLEAR 100 VG	REDACTED
(DGT) UNICLEAR 100 VG	
Nom chimique F.I.D. :	CONDENSAT. DIACIDE EN C36 HYDROGENE ETHYLENE DIAMINE, ESTERIFIE PAR ALCOOL STEARYLIQUE (PM: ENVIRON 4000) ETABLISE (ANOX 20)
Nom INCI USA :	ETHYLENEDIAMINE/STEARYL DIMER DILINOLEATE COPOLYMER

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The redacted document shows that Uniclear®100VG is also known as ethylenediamine stearyl dimer dilinoleate copolymer and this species is described since linoleic acid is 18 carboxylic diacid and the dimer acid is C36 carboxylic acid.

However, the first page of the redacted document does not state that Uniclear®100 V is ethylenediamine/tall oil dimer acid/stearyl alcohol copolymer (emphasis added), which is **ethylenediamine/stearyl dimer tallate copolymer** . Compare page 2 to page1.

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REDACTED

Nom Chimique : CONDENSAT DIACIDE EN C36 HYDROGENE/ETHYLENE DIAMINE, ESTERIFIE PAR  
ALCOOL STEARYLIQUE

Nom CTFA :

REDACTED

**Références commerciales**

Références commerciales	Fournisseurs
UNICLEAR 100 V	REDACTED

REDACTED

Numéro de CAS	Nom CTFA substance	Nom européen substance	% sub.	Rôle	Type	Color index	% etiq.	N° cinecs
REDACTED	ETHYLENEDIAMINE/TALL OIL DIMER ACID/STEARYL ALCOHOL COPOLYMER				REDACTED			
	REDACTED							

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Applicant's redacted documents clearly indicate a plurality of polymers associated with UNICLEAR as of applicant's filing date.

Applicants' attention is drawn to Arizona Chemical Company website .

**Air Care / Personal Care Gellants**

Product	Softening Point, C, Ring & Ball	Viscosity cps/mPa-s @ 160 C	Acid No.	Color, Gardner	Amine No.	Flash Point, F
Uniclear® 100	88-100	90-140	12	1-2	<1.0	520
Uniclear® 100LM	75-80	90-140	12	1-2	<1.0	520
Uniclear® 100VG*	88-98	100-160	12	1-3	<1.0	520
Sylvaclear™ C75V*	70-80	90-160	25	1-3	<1.0	508

\* Vegetable dimer based resin

The softening point and viscosity are different for Uniclear® 100 and Uniclear® 100 VG. Search on Arizona Chemical Company website did not show softening point and viscosity for Uniclear® 100 V described at top portion of page 1 of the redacted copy. There is no Uniclear® 80 described at [0064] of the specification on the website. Uniclear® 100 VG has softening point, which is 88-98. Specification describes the softening point ranging from 88-94 degrees Celsius. The softening point and viscosity for Uniclear® 100 and Uniclear® 100LM are different from Uniclear® 100 VG.

This evidence suggests that there are unspecified differences between the various UNICLEAR® products and that absent objective evidence one cannot conclude that the reference to UNICLEAR 100 in the instant specification refers to ethylenediamine/stearyl dimer tallate copolymer.

A further complication is that the CTFA from 2002 clearly sets forth that the UNICLEAR® is associated with both the dilinoleate species and the tallate species.



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Therefore there is no support in the specification for species claimed , which is

**ethylenediamine/stearyl dimer tallate copolymer** .

***Claim Rejections - 35 USC § 103***

Claims 96, 142, 167, 170, 203 and 206 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of 5,783,657 ('657) and WO 01/17488 ('488).

Patent '657 teaches polymer having gel consistency and these gels are useful in personal care products where in some self-supporting consistency is desired. See the abstract and see cols. 3-4 and see col.3, lines 31-36 where patent teaches that these polymers are useful in cosmetic art. Patent at col.4, ll 20-25 teaches ester –terminated polyamide of formula I (ETPA)

The species of claim 96 belong to the genus of this polymer. The species is formed from ethylenediamine, stearyl alcohol and tall oil fatty acid or linoleic acid. Patent at col.5, ll 1-20 describes the definition of R1 and the carbon range of 16-22 is the preferred range. Patent at col.5, ll 23-33 teaches the definition of R2 and at col.5, ll 39-40 teaches that typical unsaturated acids are linoleic acids and at col.5, ll 44-46 teaches that tall oil fatty acid is a preferred source of long-chain fatty acids. Patent at col.7, ll 24-35 teaches the preparation of ETPA . The starting materials for the ETPA are alcohols, amines and carboxylic acids are preferred starting materials (col.7, ll 24-25). Patent at paragraph bridging col.s 7-8 describes the monoalcohols and at col.8, line 3 describes preferred R1 and this includes stearyl alcohol (*one of the reactants, namely alcohols for the formation of both the claimed species*). Patent at col.8, ll 37-68 describes the second component, which is diacid and at col.9, ll 5-15 describes the acids and this includes linoleic acid (*one of the reactants, namely acids for the formation of ethylenediamine/stearyl*

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*dimer dilinoleate copolymer*) and describes the preferred fatty acid as tall oil fatty acid (*one of the reactant, namely acids for the formation of ethylenediamine/stearyl dimer tallate copolymer*).

Patent at col.9, ll 24-28 describes that polymerized fatty acids are sold under the trade name UNIDYME®. Patent at col.10, ll 18-36 describes exemplary diamines and the ethylenediamine (*one of the reactants, namely amines for the formation of both the claimed species*) is the first diamine described at line 20. Patent at col.12 through col.13, line 45 describes in detail the preparation of ETPA resins.

Patent '657 at col.14, lines 30-42 teaches that the polymer can be formulated into various personal care products. This includes deodorant, eye make-up, lipstick, foundation make-up, baby-oil, skin moisturizers, sun care products, lip balm, ethnic hair care products (claim 96).

Patent '657 at col.15, ll 11-15 teaches gel formation between ETPA and low polarity liquid like hydrocarbons or oils. This reads on claimed fatty phase of claim 142.

Patent '657 at col.15, ll 1-10 teaches the amount of ETPA resin as 1-50%.

Patent '657 at col.16, ll 43-45 teaches the gels of the invention being self supporting and they retain the shape at room temperature and in the absence of shear.

Patent '657 at col.17, ll 25-26 suggests adding ingredients that are conventionally incorporated into personal care products and suggests that gels which are formed from ETPA resin and low-polarity liquids ( oils), colorants ( claim 96 and 203), emulsifiers ( also known as surfactants) and fillers. The difference between patent '657 and instant application is patent does not teach claimed polysaccharide resin (claim 167) and claimed film former (claim 170) and the composition being a nail composition.

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However WO '488 teaches cosmetic compositions containing polysaccharide resins, which provide transfer resistant, long wearing and water resistant properties. See the abstract. WO '488 at page 3, ll 8-16 teaches that the combination of polysaccharide resin and film former other than polysaccharide resin provide transfer resistant property to cosmetic composition such as mascara, eyeliner and at ll 19-28 teaches forming transfer resistant film by applying to keratinous substances such as skin, hair, nails. WO '488 at page 7, first paragraph teaches various properties and this includes ingredient dispersing in formulations like foundations... nail enamels (claim 206). WO '488 at page 17, ll 14-21 teaches pigment dispersing properties and the pigment dispersing property results in higher efficacy of pigment. Higher efficacy of pigment implies providing more color.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare cosmetic composition using the two species belonging to polyamide resin and colorants taught by patent '657 which has gel property and also structured property and combine with polysaccharide resin and film former taught by WO '488 with the reasonable expectation of success that the compositions have the advantage of providing the consumer stable cosmetic products having structured property and gel property because of the polyamide resin of patent '657 and also provide intense color due to the presence of coloring agent and combining with polysaccharide resin and film former provide additional benefit of transfer resistant, long wearing and water resistant properties and also increase the efficacy of coloring agent thereby providing intense color to the compositions. This is a prima facie case of obviousness.

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Claim 175 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of 5,783,657 ('657) and WO 01/17488 ('488) as applied to claims 96, 142, 167, 170, 203 and 206 above, and further in view of U. S. Patent 6,423,324 ('324).

The references cited above do not teach adding fatty alcohol to the cosmetic compositions. However patent '324 teaches polyamide-based composition and teaches structurally related polyamide resin at paragraph bridging cols. 4-5 and teaches solvent for the polyamide resin and teaches fatty alcohol as the preferred solvent at col.6, ll 22-24. See also col.6, ll 51-55 for octyldodecanol (fatty alcohol). See also examples for octyldodecanol (fatty alcohol).

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare cosmetic composition using the two species belonging to polyamide resin and colorants taught by patent '657 which has gel property and also structured property and combine with polysaccharide resin and film former taught by WO '488 and combine with fatty alcohol taught by patent '324 with the reasonable expectation of success that the compositions have the advantage of providing the consumer stable cosmetic products having structured property and gel property because of the polyamide resin of patent '657 and the addition of fatty alcohol provide the polyamide resin desired firmness resin and also provide intense color due to the presence of coloring agent and combining with polysaccharide resin and film former provide additional benefit of transfer resistant, long wearing and water resistant properties and also increase the efficacy of coloring agent thereby providing intense color to the compositions. This is a prima facie case of obviousness.

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***Double Patenting***

The obviousness-type double patenting rejection of claims 96, 142, 167, 170, 203 and 206 over U. S. Patents Nos. 6,716,420, 7,008,619, 6,402,408, 6,835,399, 6,869,594, 6,881,400, 6,960,339, 6,979,469, 7,008,629, 7,011,823, 7,144,582, 6,432,391, 7,025,953, 7,052,681, and 7,023,552 are maintained.

*The terminal disclaimer filed on 5/20/09 is disapproved since all the patents and instant application is assigned to L'Oreal S.A, whereas U. S. Patent is assigned to L'Oreal.*

Claim 96 and 203 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 7,008,619 ('619).

Instant application is claiming a composition comprising:

1. ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer
2. Coloring agent

Patent '619 is claiming a method for making –up eyelashes and method for making mascara using same ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer and coloring agent along with preservative and stearic acid. Therefore it would be obvious use compositions of patent for making –up eyelashes using (i) ethylenediamine/stearyl dimer tallate copolymer, expecting that the compositions which has the polyamide polymer species and coloring agent provide intense color to mascara in view of the polymer.

The expression “comprising” in the claims is inclusive of the unrecited ingredients claimed in the patent. The transitional term "comprising", which is synonymous with

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"including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising,' the terms containing' and mixture' are open-ended."). *Invitrogen Corp. v. BiocrestMfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) ("The transition comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim). *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948).

Claims 96, 142, 167, 170, 203 and 206 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 13 of U.S. Patent No. 7,267,547 ('547) in view of WO 01/17488 ('488) and U. S. Patent 6,423,324 ('324).

Instant application is claiming a composition comprising:

1. ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer
2. Coloring agent
3. Polysaccharide resin
4. Film former
5. Fatty alcohol

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Patent '547 is claiming a composition comprising same ethylenediamine/stearyl dimer tallates copolymer or ethylenediamine/stearyl dimer dilinoleate along with oil soluble polymer chosen from alkyl celluloses and compositions further comprising film former. Patent '547 does not claim ingredients 2-4. However WO '488 teaches ingredients 2-4 and patent '324 teaches ingredient 5 in cosmetic compositions.

Therefore it would be obvious to use compositions of patent by using (i) ethylenediamine/stearyl dimer tallate copolymer, and add ingredients 2-4 expecting the compositions has the additional advantage of providing improved transfer resistant, long wearing and water resistant properties and also increase the efficacy of coloring agent thereby providing intense color to the compositions.

The expression "comprising" in the claims is inclusive of the unrecited ingredients claimed in the patent. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising,' the terms containing' and mixture' are open-ended."). *Invitrogen Corp. v. BiocrestMfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) ("The transition comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the

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claim). In re Gray, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); Ex parte Davis, 80 USPQ 448,450 (Bd. App. 1948).

Claims 96, 142, 167, 170, 203 and 206 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18 and 20-21 of U.S. Patent No. 7,314,612 ('612) in view of WO 01/17488 ('488) and U. S. Patent 6,423,324 ('324).

Instant application is claiming a composition comprising:

1. ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer
2. Coloring agent
3. Polysaccharide resin
4. Film former
5. Fatty alcohol

Patent '612 is claiming a composition, various cosmetic products using same ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer belonging to formula I. Patent '612 does not claim ingredients 2-5. However WO '488 teaches ingredients 2-4 and patent '324 teaches ingredient 5 in cosmetic compositions.

Therefore it would be obvious use compositions of patent by using (i) ethylenediamine/stearyl dimer tallate copolymer, and add ingredients 2-4 expecting the compositions has the additional advantage of improved transfer resistant, long wearing and water resistant properties and also increase the efficacy of coloring agent thereby providing intense color to the compositions.



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The expression "comprising" in the claims is inclusive of the unrecited ingredients claimed in the patent. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising,' the terms containing' and mixture' are open-ended."). *Invitrogen Corp. v. BiocrestMfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) ("The transition comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim). *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948).

Claims 96, 142, 167, 170, 203 and 206 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5 and 18 of U.S. Patent No. 7,351, 418 ('418) in view of WO 01/17488 ('488) and U. S. Patent 6,423,324 ('324).

Instant application is claiming a composition comprising:

1. ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer
2. Coloring agent
3. Polysaccharide resin
4. Film former

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## 5. Fatty alcohol

Patent '418 is claiming a cosmetic composition, using same ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer belonging to formula I and dispersion of polymer particles. Patent '418 does not claim ingredients 2-5. However WO '488 teaches ingredients 2-4 and patent '324 teaches ingredient 5 in cosmetic compositions.

Therefore it would be obvious use compositions of patent by using (i) ethylenediamine/stearyl dimer tallate copolymer, and add ingredients 2-4 expecting the compositions has the additional advantage of improved transfer resistant, long wearing and water resistant properties and also increase the efficacy of coloring agent thereby providing intense color to the compositions.

The expression "comprising" in the claims is inclusive of the unrecited ingredients claimed in the patent. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising, the terms containing' and mixture' are open-ended."). *Invitrogen Corp. v. BiocrestMfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) ("The transition comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the

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claim). In re Gray, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); Ex parte Davis, 80 USPQ 448,450 (Bd. App. 1948).

Claims 96, 142, 167, 170, 203 and 206 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 29-30 of U.S. Patent No. 7,410,636 ('636) in view of WO 01/17488 ('488) and U. S. Patent 6,423,324 ('324).

Instant application is claiming a composition comprising:

1. ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer
2. Coloring agent
3. Polysaccharide resin
4. Film former
5. Fatty alcohol

Patent '636 is claiming a composition, using same ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer belonging to formula I along with fibers. Patent '636 does not claim ingredients 2-5. However WO '488 teaches ingredients 2-4 and patent '324 teaches ingredient 5 in cosmetic compositions.

Therefore it would be obvious use compositions of patent by using (i) ethylenediamine/stearyl dimer tallate copolymer, and add ingredients 2-4 expecting the compositions has the additional advantage of improved transfer resistant, long wearing and water resistant properties and also increase the efficacy of coloring agent thereby providing intense color to the compositions.

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The expression "comprising" in the claims is inclusive of the unrecited ingredients claimed in the patent. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising,' the terms containing' and mixture' are open-ended."). *Invitrogen Corp. v. BiocrestMfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003) ("The transition comprising' in a method claim indicates that the claim is open-ended and allows for additional steps."); *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim). *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948).

*Non-patent literature from Arizona Chemical Company titled "Formulating Personal Care Products with Polyamide Gellants" is pertinent art. The publication date is not known to the examiner.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615

/Michael G. Wityshyn/  
Acting Director, Technology Center 1600